

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 02-18

APPLICANT
Paul Cisternelli

LOCATION OF PROPERTY INVOLVED
Lot 1 Renmar Avenue
Walpole Assessors Map 32-87, District: LM-WROD 3

APPLICATION

A VARIANCE under Section 6-B.1. and section 12-3.A-3.B. to allow a proposed commercial building to be constructed on an existing lot, containing 38,675 square feet (s.f.) where 40,000 square feet (s.f.) is required.

A VARIANCE under Section 6-B.1. to allow a proposed building to be constructed with a setback of 25 feet (ft.) where 50 ft. is required.

A VARIANCE under Section 6-B.1. note 9 to allow outside storage area for equipment to be located with a setback of 10 ft. where 50 ft. is required.

A SPECIAL PERMIT under Section 12-3.B. to allow the storage and handling of toxic or hazardous materials on the premises, in quantities greater than those associated with the normal household use.

A SPECIAL PERMIT under Section 12-3.A.-3-B & C for a nonresidential use to allow forty-four percent (44%) of the lot area to be rendered impervious, where fifteen percent (15%) is allowed.

A Public Hearing was opened on March 7, 2018 and continued to April 4, 2018 and April 18, 2018 in the Main Meeting Room of Town Hall. The purpose was to receive information and testimony and to vote on the requested Special Permits and Variances. The members who were present and voting:

Craig Hiltz, Vice Chair
Robert Fitzgerald, Clerk
Susanne Murphy, Member
John Lee, Associate Member

RECEIVED
18 APR 30 AM 11:19
TOWN OF WALPOLE
TOWN CLERK

VOTE OF THE BOARD:

A motion was made by Hiltz and seconded by Fitzgerald, to grant a Variance under Section 6-B.1. and Sections 12-3.A-3.B. to allow a proposed commercial building to be constructed on an existing lot, containing 38,675 s.f. where 40,000 s.f. are required. The vote was 4-0-0 in favor (Hiltz, Murphy, Fitzgerald, Lee voting); therefore, the Variance under Section 6-B.1. and Section 12-3.A-3.B. was granted subject to the following conditions:

1. The building shall be constructed as shown on site plans (Lot 1- Renmar Avenue, Walpole, MA, by John R. Anderson & Associates dated September 22, 2008) presented at the Public Hearing a copy of which is on file with the Board.

REASONS FOR DECISION

It is the determination of the Board that the Applicant was able to meet the requirements for the granting of a Variance, as per the following:

FURTHER FINDINGS

Section 2: Administration, paragraph 3. Variances within the Town of Walpole Zoning Bylaw provides that the Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a Variance from the terms of this Bylaw. As such, the Board hereby makes the following findings:

1. Section 2.3 First Clause:

Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship financial or otherwise, to the appellant or petitioner and

The Board finds that the lot is oddly shaped with significant topographical changes and varying levels of elevation throughout the property. The literal enforcement of the bylaw would create a substantial economic hardship due to the fact that the Applicant would need to acquire more land in order to meet the requirement of 40,000 s.f. Due to the property of the proposed commercial building being in the Limited Manufacturing District, the structure will not be a detriment to the surrounding neighborhood and District. Therefore, this requirement is satisfied.

2. Section 2.3 Second Clause:

That desirable relief may be granted without substantial detriment to the public good and

The Board finds that there will be no substantial detriment to the public good due to the proposed commercial building. The building is to be located within the Limited Manufacturing District with suitable screening from nearby residential structures thereby limiting impacts

thereon. As a result it is in harmony with the surrounding neighborhood and this requirement is satisfied.

3. Section 2.3 Third Clause

Without nullifying or derogating from the intent and purpose of this Bylaw.

One of the purposes of the Zoning Bylaw is, "... *to support the economic wellbeing of the Town, and to encourage the most appropriate use of the land.*" The Board finds that allowing the proposed non-residential project to be built in the Limited Manufacturing District is in harmony with the intent of this District. This is an appropriate use of the land that will support the economic wellbeing of the Town without nullifying or derogating from the intent of the purpose of the bylaw. Therefore, this requirement is satisfied.

VOTE OF THE BOARD

A motion was made by Hiltz and seconded by Fitzgerald, to grant a Variance under Section 6-B.1. to allow a proposed building to be constructed with a front-yard setback of 25 ft. where 50 ft. is required. The vote was 4-0-0 in favor (Hiltz, Murphy, Fitzgerald, Lee voting); therefore, the Variance from Section 6-B.1. is hereby granted.

REASONS FOR DECISION

It is the determination of the Board that the Applicant was able to meet the requirements for the granting of a Variance, as per the following:

FURTHER FINDINGS

Section 2: Administration, paragraph 3. Variances within the Town of Walpole Zoning Bylaw provides that the Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a Variance from the terms of this Bylaw. As such, the Board hereby makes the following findings:

1. Section 2.3 First Clause:

Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship financial or otherwise, to the appellant or petitioner and

The Board finds that the narrow, sloping and angular shape of the lot places severe restrictions on positioning a building and the required site improvements (parking, storage, stormwater management, etc.) that are economically viable with the 50 ft. setback as required in the bylaw. Granting the requested relief allows a building and the associated site improvements to be made in a reasonable and appropriate manner. Therefore, this requirement is satisfied.

2. Section 2.3 Second Clause:

That desirable relief may be granted without substantial detriment to the public good and

The Board finds that due to the property being located in the Limited Manufacturing District, the proposed front yard setback for the commercial building will be consistent with the character of the surrounding neighborhood. As a result, there is no substantial detriment to the public good and this requirement is satisfied.

3. Section 2.3 Third Clause:

Without nullifying or derogating from the intent and purpose of this Bylaw.

The Board finds that one of the purposes of the Zoning Bylaw includes, *“to support the economic wellbeing of the Town, and to encourage the most appropriate use of the land.”* The building and site improvements were previously approved for this commercially zoned lot. Due to the lot’s unique topography and shape, the proposed positioning of the building would allow the Applicant to construct an economically viable business. The Board finds that the proposed setback (with landscaping) will enable the Applicant to have the most appropriate use of the land. Therefore, this requirement is satisfied.

VOTE OF THE BOARD

A motion was made by Hiltz and seconded by Murphy to grant a Variance under Section 6-B.1. note 9 to allow outside storage area for equipment to be located with a setback of ten feet (10’) where fifty feet (50’) is required. The vote was 4-0-0 in favor (Hiltz, Murphy, Lee, Fitzgerald), therefore the Variance from Section 6-B.1. note 9 is granted subject to the following conditions:

1. The proposed six foot (6’) high solid fence and evergreen plantings along the west property line providing screening of the outdoor storage area shall be installed prior to the issuance of a Certificate of Occupancy from the Inspection Department.

REASONS FOR DECISION

It is the determination of the Board that the Applicant was able to meet the requirements for the granting of a Variance, as per the following:

FURTHER FINDINGS

Section 2: Administration, paragraph 3. Variances within the Town of Walpole Zoning Bylaw provides that the Board of Appeals may grant, upon appeal or upon petition, with respect to particular land or structure thereon, a Variance from the terms of this Bylaw. As such, the Board hereby makes the following findings:

1. Section 2.3 First Clause:

Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship financial or otherwise, to the appellant or petitioner and

The Board finds the elongated tapering shape of the lot and the inability to expand it due to the presence of privately owned abutting properties makes it practically impossible to comply with the fifty foot (50 ft.) front-yard setback requirement. The resulting building would be uneconomic to construct thereby placing extreme limitations on the use of the property. Further, the slope of the land at the southern end of the property does not lend itself to parking and makes it practically impossible for the Applicant to comply with the Bylaw. Outside storage within the Limited Manufacturing District is a virtual necessity for the proposed use of the lot, and without allowing such, it would create a financial hardship. Therefore, this requirement is satisfied.

2. Section 2.3 Second Clause:

That desirable relief may be granted without substantial detriment to the public good and

The Board finds that due to the property being located in the Limited Manufacturing District, the proposed front-yard setback for the building will be in character with the surrounding non-residential neighborhood. In addition, the required fencing and vegetation will provide suitable screening of the storage area. As a result, there is no substantial detriment to the public good and this requirement is satisfied.

3. Section 2.3 Third Clause:

Without nullifying or derogating from the intent and purpose of this Bylaw.

The Board finds that one of the purposes of the Bylaw includes, "*to support the economic wellbeing of the Town, and to encourage the most appropriate use of the land.*" The Board finds that outside storage is necessary for the business to be economically viable. Further, limiting or prohibiting the storage would create an economic/financial hardship to the Applicant. The proposed ten foot (10') setback, and required screening, for the outside storage area will allow the Applicant to sustain its business on the property and use the land in the most appropriate way without adverse impacts to the neighborhood. Therefore, this requirement is satisfied.

VOTE OF THE BOARD

A motion was made by Fitzgerald and seconded by Lee to grant a Special Permit under Section 12-3.B. to allow the storage and handling of toxic or hazardous materials on premises, in quantities greater than those associated with normal household use. The vote was 4-0-0 in favor (Hiltz, Fitzgerald, Murphy, Lee voting). Therefore, the Special Permit under Section 12-3.B. is granted subject to the following conditions:

1. Any and all toxic or hazardous materials shall be stored inside of the building.
2. All types and quantities of toxic or hazardous materials will be limited to those detailed on sheet 4 of 4 in the plan set as previously approved by the Fire Department.
3. The Applicant shall maintain a spill response kit on site at all times (as detailed in the Note on sheet 4 of 4 in the plan set) and the response procedures will be followed as required by the Fire Department.

REASONS FOR DECISION:

It is the determination of the Board that the Applicant was able to meet the requirements of Section 12-3.B. to allow the storage and handling of toxic or hazardous materials on premises, in quantities greater than those associated with normal household use. Accordingly, the Board has determined that the Special Permit is warranted with the three (3) conditions noted above.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination within the Town of Walpole Zoning Bylaw require that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

As discussed and detailed above, the proposed handling of toxic or hazardous materials complies with the Special Permit provisions of Section 12-3.B. of the Zoning By-law.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the inside storage and handling of toxic or hazardous materials will not result in any vehicular or pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood. As such, this condition is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that the storage and handling of toxic or hazardous materials inside of

the building will not have a number of residents, employees, customers or visitors to adversely affect the immediate neighborhood.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that, with the relief granted herein, the proposed dimensions, lot coverage, buffer zone requirements and setbacks comply with those in the Limited Manufacturing District and in Section 5-G of the Bylaws.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds the inside storage and handling of toxic or hazardous materials in the volumes permitted, will not be dangerous to the immediate neighborhood of the premises through fire, explosion, or other causes. As conditioned herein, the Applicant will be required to store all such materials indoors, have a spill response kit on the site at all times, and maintain response procedures that will be followed as required by the Fire Department.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed building, outside equipment storage and the inside storage of toxic or hazardous materials is consistent with the uses in this manufacturing zone. Further, that it is in character of the types of non-residential uses in the immediate neighborhood. The Fire Department has reviewed and approved of the types and quantities of the toxic or hazardous material, a spill response kit will be on site and response procedures are set in place if needed. As a result, the proposed storage of the listed toxic or hazardous materials will not create noise, vibration, dust, heat, smoke, fumes, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the storage and handling of the listed toxic or hazardous materials will not adversely affect the character of the immediate neighborhood. These materials will be stored inside of the building at all times. The property is located within the Limited Manufacturing District, which has similar types of uses. Therefore, the use is consistent with the character and immediate neighborhood, and as permitted, will not create any adverse impacts.

(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "...to encourage the most appropriate use of the land...". By allowing the storage and handling of toxic or hazardous

materials in the Limited Manufacturing District, it allows the Applicant to operate a business and to use the land in the most appropriate way. As conditioned herein, this use is compatible with the purpose of the Zoning Bylaw and this condition is satisfied.

VOTE OF THE BOARD

A motion was made by Hiltz, and seconded by Lee to grant a Special Permit under Section 12-3.A.-3-B & C for a non-residential use to allow forty-four (44%) of the lot area to be rendered impervious, where fifteen (15%) is allowed. The vote was 4-0-0 (Hiltz, Fitzgerald, Murphy, Lee voting). Therefore, the Special Permit is granted subject to the following conditions:

1. The site shall be maintained according to the Operations and Management Plan presented at the Public Hearing and as detailed on the approved site plans.
2. During construction the Applicant agreed to increase the size of the infiltration trench from twelve inches (12") to twenty-four inches (24") on Renmar Avenue along the face of the proposed wall, in order to manage additional runoff volumes associated with the larger impervious area. The increase of size shall be reflected on the As-Built Plan.
3. The Applicant shall comply with the provisions of Section 12.B & C as detailed below.

REASONS FOR DECISION:

It is the determination of the Board that with the imposed conditions, the Applicant has met the requirements under Section 12. Water Resource Protection Overlay District, paragraph 3. Use Regulations, paragraph C. Decision of the SPGA and Section 2: Administration, 2. Special Permits, B. Finding and Determination of the Walpole Zoning Bylaws.

FURTHER FINDINGS

Pursuant to Section 12.C, the SPGA may grant a Special Permit if it finds the proposed use:

- (1) Complies with applicable performance and/or design criteria listed in Section 12.3C of the Zoning Bylaw;**

As conditioned herein, the Board finds that the proposed increase in impervious area on the lot (to 49%) will not have an adverse impact on the groundwater. The small amount of hazardous materials will be stored inside the building, along with a spill response kit, thereby preventing any migration into the groundwater from a potential spill. The clean water from the roof is being directed into subsurface leaching chambers. The impervious pavement is sloped to capture all run-off and treat it through a contemporary stormwater treatment train prior to it entering the ground. This stormwater management system complies with the Massachusetts Stormwater Policy guidelines. It has been reviewed by the Town Engineer and adjustments have been made to ensure the recharge and drainage will be adequate.

- (2) Will not, during construction or thereafter, have an adverse environmental impact on any water body or course in the district; and**

There are no water bodies on or adjacent to the property. The site will be encircled by erosion controls during construction. Once paved, the stormwater management system will collect and treat stormwater as detailed herein prior to it entering the ground. As a result, there will be no adverse impacts on any water body during or after construction.

(3) Will not adversely affect the existing or potential water supply.

The Locus is within *Area 3 Primary Recharge Area* as noted on the *Aquifer Map, Town of Walpole (August 2000)*. As conditioned herein, the Board finds that the proposed increase in impervious area on the lot (to 49%) will not have an adverse impact on groundwater quality. The small amount of hazardous materials will be stored inside the building, along with a spill response kit, thereby preventing any migration into the groundwater from a potential spill. The clean water from the roof is being directed into subsurface leaching chambers. The impervious pavement is sloped to capture all run-off and treat it through a contemporary stormwater treatment train prior to it entering the ground. This stormwater management system complies with the Massachusetts Stormwater Policy guidelines. It has also been reviewed by the Town Engineer and adjustments have been made to ensure the recharge and drainage will be adequate.

Pursuant to Section 2: Administration, 2. Special Permits, B. Finding and Determination within the Town of Walpole Zoning Bylaw require that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

As conditioned herein, the Board finds that the proposed increase in impervious area on the lot (to 49%) will not have an adverse impact on groundwater quality. The small amount of hazardous materials will be stored inside the building, along with a spill response kit, thereby preventing any migration into the groundwater from a potential spill. The clean water from the roof is being directed into subsurface leaching chambers. The impervious pavement is sloped to capture all run-off and treat it through a contemporary stormwater treatment train prior to it entering the ground. This stormwater management system complies with the Massachusetts Stormwater Policy guidelines. It has been reviewed by the Town Engineer and adjustments have been made to ensure the recharge and drainage will be adequate.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that this criterion is not applicable to the current WRPD application.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

The Board finds that this criterion is not applicable to the current WRPD application.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

As conditioned herein, the Board finds that the proposed increase in impervious area on the lot (to 49%) will not have an adverse impact on the groundwater. As a result the Special Permit request was granted. As discussed above, the Board also granted a Variance from the front yard setback for the building from 50 feet to 25 feet.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

Pursuant to the conditions above, the Board finds that the new building with an increase of impervious area shall not be dangerous to the immediate neighborhood through fire, explosion, emission of wastes, or other causes. The building will have a modern fire alarm and suppression system. The small amount of hazardous materials will be stored inside the building and are not generally subject to explosion and are also prevented from migrating into the groundwater (from a potential spill). The drainage system is designed to capture all run-off and treat it through a contemporary stormwater treatment train prior to it entering the groundwater regime.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that this criterion is not applicable to the current application for an increase in the maximum lot coverage in the WRPD.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that this criterion is not applicable to the current application for an increase in the maximum lot coverage in the WRPD.

(h) shall not be incompatible with the purpose of the Zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, “...to encourage the most appropriate use of the land”. Being in the Limited Manufacturing district the commercial use is allowed. The locus is also within the Zone 3 of the Water Resource Protection overlay district. Accordingly, the site plan for the proposed commercial use includes a contemporary stormwater treatment train to treat the stormwater prior to it entering the ground. The clean water from the roof is being directed into subsurface leaching chambers. It also includes a comprehensive Operation & Maintenance Program to ensure the system is properly monitored and maintained.

As a result, this condition is satisfied and the proposed increase in lot coverage is compatible with the purpose of the Zoning Bylaw

CONSISTENCY

This decision is consistent with the purpose and intent of the Zoning Bylaws.

Said Special Permits are granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

Said Variances are granted pursuant to Massachusetts General Laws c. 40A, s. 10 which provides in pertinent part as follows: "If the rights authorized by a Variance are not exercised within one year of the date of grant of such Variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of application thereof, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

Massachusetts General Laws c. 40A, s. 11 provides in pertinent part as follows:

“...No Variance or Special Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded at the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner’s certificate of title. The fee for recording or registering shall be paid by the owner or applicant.”

APPEALS FROM THIS DECISION FOR A SPECIAL PERMIT, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Robert Fitzgerald, Clerk

RF/am

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on April 18, 2018 and filed with the Town Clerk on April 30, 2018.